

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

NICOLE L. WARDLOW

Claimant

VS.

LABORATORY CORPORATION OF AMERICA

Respondent

AND

ACE PROPERTY & CASUALTY

INSURANCE COMPANY

Insurance Carrier

Docket No. 1,004,112

ORDER

Respondent and its insurance carrier appealed the January 9, 2004 Award entered by Administrative Law Judge Nelsonna Potts Barnes. The Board heard oral argument on June 29, 2004.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared for claimant. Scott J. Mann of Hutchinson, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant alleges she injured her upper extremities while working for respondent from March 2002 and each and every workday through April 10, 2002. Claimant also alleges she injured her right ankle on September 16, 2002, while attending physical therapy for her upper extremities.

In the January 9, 2004 Award, Judge Barnes determined claimant sustained a 14 percent whole person functional impairment due to her bilateral upper extremity injuries and a two percent whole person functional impairment due to her right ankle injury.

Consequently, the Judge granted claimant disability benefits for a 16 percent permanent partial general disability.

Respondent contends Judge Barnes erred. Respondent argues the Judge erred in disregarding Dr. Paul S. Stein's opinion that claimant sustained a five to six percent whole person functional impairment for her bilateral upper extremity injuries. Moreover, respondent contends claimant's right ankle injury was not related to claimant's medical treatment for her upper extremities and, therefore, the right ankle injury is not compensable under the Workers Compensation Act. Accordingly, respondent requests the Board to deny claimant benefits for the ankle injury and to average the functional impairment ratings provided by Dr. Stein and Dr. Pedro A. Murati.

Conversely, claimant requests the Board to affirm the Award.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes:

The facts are relatively simple. Claimant developed symptoms in both upper extremities while working for respondent, which claimant attributed to frequent typing. On September 16, 2002, while undergoing therapy for her upper extremities that required her to sit motionless, claimant's right foot became numb. Consequently, when claimant attempted to stand, her right ankle turned.

Respondent does not contest the bilateral upper extremity injuries but challenges whether claimant should receive workers compensation benefits for the right ankle. The Judge determined the right ankle injury was a direct consequence of the bilateral upper extremity injuries and, therefore, awarded claimant benefits for the right lower extremity. The Board agrees.

The right ankle injury occurred when claimant's right foot became numb as she sat motionless receiving therapy for her upper extremities. Accordingly, the accident involving the right ankle arose as a direct consequence of her bilateral upper extremity injuries and as a direct consequence of the medical treatment that claimant received for those upper extremity injuries.

When a primary injury under the Workers Compensation Act is shown to have arisen out of the course of employment, every natural consequence that flows from

the injury, including a new and distinct injury, is compensable if it is a direct and natural result of the primary injury.¹

An injury which occurs during a participation in a work-hardening program or functional capacity evaluation made necessary by a previous work-related injury is a direct and natural result of the previous injury.²

Dr. Pedro A. Murati examined claimant in November 2002 and diagnosed claimant as having a sprain in her right lower extremity, which he rated under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.) as comprising a two percent whole person functional impairment. Dr. Paul S. Stein evaluated claimant in April 2003 at the Judge's request. But Dr. Stein did not evaluate claimant's right ankle as the doctor believed it was outside his area of expertise.

Dr. Murati's functional impairment opinion regarding the right ankle injury is uncontradicted. Consequently, the Board finds claimant sustained a two percent whole person functional impairment due to that injury.

Regarding claimant's upper extremity injuries, Dr. Murati diagnosed early bilateral carpal tunnel syndrome referring pain to the shoulders and myofascial pain syndrome affecting both shoulders. Using the AMA Guides (4th ed.), Dr. Murati determined claimant sustained a 14 percent whole person functional impairment due to those injuries. Conversely, Dr. Stein diagnosed bilateral overuse syndrome affecting both hands and wrists. According to Dr. Stein, claimant had a cumulative trauma disorder that fell outside the AMA Guides. Dr. Stein, however, rated claimant's whole person functional impairment at five to six percent.

The Workers Compensation Act provides that the fourth edition of the AMA Guides is to be used if the impairment is contained in the Guides.³ Consequently, if the impairment is not contained in the Guides, the medical experts are left to rate an impairment by other means.

The Board is not persuaded that Dr. Murati's opinion regarding functional impairment is any more credible than Dr. Stein's. Accordingly, the Board averages those ratings and finds that claimant has sustained a 10 percent whole person functional impairment due to her bilateral upper extremity injuries. Combining that functional impairment rating with the two percent whole person rating due to the right lower extremity

¹ *Frazier v. Mid-West Painting, Inc.*, 268 Kan. 353, Syl. ¶ 1, 995 P.2d 855 (2000).

² *Id.* at Syl. ¶ 2.

³ See K.S.A. 44-510e.

injury, the Board concludes claimant is entitled to receive permanent partial general disability benefits for a 12 percent whole person functional impairment.

AWARD

WHEREFORE, the Board modifies the January 9, 2004 Award and decreases claimant's permanent partial general disability from 16 percent to 12 percent.

Nicole L. Wardlow is granted compensation from Laboratory Corporation of America and its insurance carrier for an accidental injury beginning March 2002 and each and every day worked thereafter through April 10, 2002, with a right ankle injury on September 16, 2002, and resulting disability. Based upon an average weekly wage of \$487.82, Ms. Wardlow is entitled to receive 4.14 weeks of temporary total disability benefits at \$325.23 per week, or \$1,346.45, plus \$472.58 in temporary partial disability benefits, plus 49.80 weeks of permanent partial general disability benefits at \$325.23 per week, or \$16,196.45, for a 12 percent permanent partial general disability. The total award is \$18,015.48, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of July 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Scott J. Mann, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director